IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

OP.No. 20018 of 1998(G)

PETITIONER:

S.SURESH, KONNASSERIL HOUSE,
KALLELI BHAGAM P.O., KARUGANAPPALLY,
KOLLAM.

BY ADV. SRI.P.K.VIJAYA MOHAN

RESPONDENTS:

1. INDUSTRIAL TRIBUNAL, KOLLAM.

2. INDIAN RARE EARTHS LTD.
CHAVARA POST, KOLLAM, REP. BY ITS GENERAL MANAGER.

BY ADV.SHRI.NANDAKUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 28/02/2007, ALONG WITH OP NO. 28497 OF 2002
THE COURT ON 28/02/2007 DELIVERED THE FOLLOWING:

O.P.NO.20018/98.

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE PROCEEDINGS DTD.16.11.94.

P2. COPY OF THE JUDGMENT DTD.16.8.96 IN O.P.NO.11631/95 OF THIS COURT.

P3. COPY OF THE CLAIM STATEMENT DTD.22.11.96.

P4. COPY OF THE AWARD DTD.4.6.97 OF R1.

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P.A. to Judge.

S.SIRI JAGAN, J.

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O.P.No.20018/1998 & 28497/2002

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Dated this the 28th day of February, 2007

J U D G M E N T

Both the workman and the management in I.D.No.14/1996 before the Industrial Tribunal, Kollam, are challenging the award passed by the Industrial Tribunal in the said dispute. O.P.No.20018/1998 is filed by the workman and the other by the management. Therefore, these two original petitions are being disposed of by this common judgment. The issue referred for adjudication is as follows:-

> "Whether the action of the management of Indian Rare Earths Ltd. Mining Division, Chavara, denying employment to Sri.S.Suresh, in the cadre of Clerk-cum-Typist is justified? If not, what directions are necessary in the matter."

2. The workman was admittedly a workman employed by a contractor by name George, employed by the management for mining and transporting sand. Some time in 1981, the

management decided to dispense with the practice of engaging contractors for mining and transporting. At that time, there were 646 regular workers and 49 temporary workers working through various contractors. By a settlement entered into between the management and various unions representing the contract workers, the company absorbed 440 workers out of 647 regular workers and 48 out of 49 temporary workers engaged by the mining contractors. The workman involved in the dispute was the lone temporary worker left out. It is the said workman who raised the above industrial dispute, in which the above issue was referred for adjudication.

3. The Tribunal found against the workman on several points, which are:

(1) There was unexplained delay in raising the industrial dispute.

(2) The workman was not employed by the management, but only by a contractor. So there can be no dispute between the management and the workman

in the I.D., which can be referred for adjudication, as admittedly the workman was employed by a contractor.

(3) The issue referred for adjudication was denial of employment, but admittedly the claim of the workman was regularisation in service of the management, which cannot be adjudicated by the Industrial Tribunal since the issue referred to it, was not one of regularisation, but only denial of employment.

(4) The issue is one covered by Ext.M1 settlement and therefore, there cannot be any industrial dispute in respect of a matter covered by that settlement.

4. While holding that the reference was not maintainable, the Tribunal went into certain factual aspects of the case against the management and entered certain findings prejudicial to the interest of the management, which, according to the management, is without jurisdiction as the Industrial Tribunal itself has held that the

dispute is not maintainable at all and therefore, they challenge that part of the award in O.P.28497/2002. According to the management, when the industrial dispute itself was not maintainable, the Tribunal was not justified in entering the findings in respect of those questions, which according to the management, are in any way against the facts and evidence in the case and therefore, not sustainable in law.

5. I have considered the arguments of both sides in detail.

6. Even if the issue on the delay can be found in favour of the workman by taking a lenient view which the workman may deserve in the facts and circumstances of the case, there are several other hurdles in the way of the workman before he can win the industrial dispute. The first is that the issue referred for adjudication is denial of employment to the workman by the management in the I.D. Admittedly, the workman was not employed by the management in the industrial dispute, but only by the contractor engaged by the management. The

workman has no case that the present management has at any time denied employment to him. On the other hand, his very definite case is that when the management decided to absorb contract workers, it was not justifiable on the part of the management to leave the petitioner out while absorbing all other temporary workers. Therefore, it is plain that the issue as referred by the Government could not have been answered in favour of the workman. For that reason alone, the original petition filed by the workman is liable to be dismissed. Further, once the fact that what the workman claims is absorption in service by the management is admitted, then the same does not qualify as an industrial dispute, but only as an individual dispute. It would become an industrial dispute only if it is espoused by a union since absorption in service is not one of the disputes which qualifies as an industrial dispute even when raised by an individual workman, since section 2A of the Industrial Dispute Act does not apply to the dispute.

7. Further, admittedly there is a settlement between the management and various unions representing workmen regarding the workman to be absorbed from among the contract workers which is a conciliation settlement. It is settled law that a conciliation settlement would be binding on all workmen of an industry and an individual workman cannot challenge the validity or otherwise of a conciliation settlement. For that reason also, the workman cannot succeed.

8. For the above reasons, I do not find any merit in O.P.No.20018/1998 and accordingly, the same is dismissed.

9. Since the industrial dispute itself has been found to be not maintainable under law, the Tribunal had no business to go into the merits of the case and enter certain findings on evidence against the management. I make it clear that all those findings entered against the management are totally unnecessary and not binding on the management. Therefore, without going into the

correctness or otherwise of these findings, adjudication of which is not called for, O.P.No.28497/2002 is disposed of in those terms.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.No.20018/1998 &
28497/2002

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J U D G M E N T

28th February, 2007